

Senate File 102 - Introduced

SENATE FILE 102

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A BILL FOR

1 An Act relating to illegal immigration, providing penalties,
2 and including effective date provisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 13.11 Memorandum of understanding
2 — immigration issues.

3 1. The attorney general shall negotiate the terms of a
4 memorandum of understanding between the state of Iowa and
5 the United States department of justice or the United States
6 department of homeland security concerning the enforcement of
7 federal immigration and custom laws, detention and removal of
8 unauthorized aliens, and investigations in the state of Iowa.

9 2. The memorandum of understanding shall be signed on behalf
10 of this state by the attorney general and the governor or as
11 otherwise required by the appropriate federal agency.

12 3. A local governmental entity shall not enact any ordinance
13 or policy that limits or prohibits a law enforcement officer,
14 local official, or local government employee from communicating
15 or cooperating with federal officials with regard to the
16 immigration status of any person within this state.

17 4. Notwithstanding any other provision of law, a
18 governmental entity or official within this state shall not
19 prohibit, or in any way restrict, any governmental entity or
20 official from sending to, or receiving from, the United States
21 department of homeland security, information regarding the
22 citizenship or immigration status, lawful or unlawful, of any
23 person.

24 5. Notwithstanding any other provision of law, a person or
25 governmental agency shall not prohibit, or in any way restrict,
26 a public employee from doing any of the following with respect
27 to information regarding the immigration status, lawful or
28 unlawful, of any person:

29 a. Sending information to, or requesting or receiving such
30 information from, the United States department of homeland
31 security.

32 b. Maintaining the information in paragraph "a".

33 c. Exchanging the information in paragraph "a" with any
34 other federal, state, or local governmental entity.

35 6. Any natural person lawfully domiciled in this state may

1 file for a writ of mandamus to compel any noncooperating local
2 or state governmental entity to comply with the information
3 sharing provisions set forth in this section.

4 Sec. 2. NEW SECTION. **91A.15 Independent contractors — wage**
5 **withholding.**

6 1. An employer shall withhold state income tax at the
7 rate of six percent of the amount of compensation paid to
8 an individual, which compensation is required to be reported
9 on internal revenue service form 1099 and with respect to
10 which the individual has failed to provide a valid social
11 security number issued by the United States social security
12 administration.

13 2. An employer who fails to comply with the withholding
14 requirements of subsection 1 shall be liable for the taxes
15 required to have been withheld unless the employer is exempt
16 from federal withholding with respect to such an individual
17 pursuant to a properly filed internal revenue service form 8233
18 or its equivalent, and has provided a copy of such form to the
19 department of revenue.

20 Sec. 3. NEW SECTION. **91F.1 Definitions.**

21 As used in this chapter, unless the context otherwise
22 requires:

23 1. "*Commissioner*" means the labor commissioner appointed
24 pursuant to section 91.2, or the commissioner's designee.

25 2. "*E-verify program*" means one of the following:

26 a. The electronic verification of work authorization status
27 program authorized by the federal Illegal Immigration Reform
28 and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a,
29 operated by the United States department of homeland security.

30 b. Any federal work authorization status program equivalent
31 to the program described in paragraph "a" and operated by
32 the United States department of homeland security or any
33 other designated federal agency authorized to verify the work
34 authorization status of newly hired employees, pursuant to the
35 federal Immigration Reform and Control Act of 1986, Pub. L. No.

1 99-603.

2 3. "*Public employer*" means this state, its boards,
3 commissions, agencies, and departments, and its political
4 subdivisions including school districts and other special
5 purpose districts.

6 4. "*Subcontractor*" means a subcontractor, contract
7 employee, staffing agency, or any contractor regardless of the
8 contractor's tier.

9 5. "*Unfair trade practice*" means any practice that offends
10 established public policy or is immoral, unethical, oppressive,
11 unscrupulous, or substantially injurious to consumers.

12 Sec. 4. NEW SECTION. 91F.2 E-verify program —
13 participation.

14 1. Each public employer shall register and participate in
15 the e-verify program to verify the work authorization status
16 of all newly hired employees.

17 2. a. A public employer shall not enter into a contract
18 for the performance of services within this state unless the
19 contractor registers and participates in the e-verify program
20 to verify the work authorization status of all newly hired
21 employees.

22 b. A contractor or subcontractor shall not enter into a
23 contract or subcontract with a public employer in connection
24 with the physical performance of services within this
25 state unless the contractor or subcontractor registers and
26 participates in the e-verify program to verify the work
27 authorization status of all newly hired employees.

28 3. The discharge of any United States citizen or permanent
29 resident alien employee by an employer of this state, who, on
30 the date of the discharge employed an unauthorized alien, as
31 defined in section 710B.1, shall constitute an unfair trade
32 practice, and the discharged employee shall have a private
33 right of action for such unfair trade practice.

34 4. The provisions of this chapter shall be enforced without
35 regard to race, religion, gender, ethnicity, or national

1 origin.

2 5. The commissioner shall prescribe forms and administer
3 and effectuate the provisions of this chapter and publish any
4 rules on the department of workforce development's internet
5 site.

6 Sec. 5. NEW SECTION. **234.15 Citizenship verification**
7 **program — public benefits.**

8 1. Except as provided in subsection 3 or where exempted
9 by federal law, every state agency and political subdivision
10 of this state shall verify the lawful presence in the United
11 States of any natural person fourteen years of age and older
12 who has applied for state or local public benefits, as defined
13 in 8 U.S.C. § 1621, or for federal public benefits, as defined
14 in 8 U.S.C. § 1611, that are administered by a state agency or
15 political subdivision of this state.

16 2. The provisions of this section shall be enforced without
17 regard to race, religion, gender, ethnicity, or national
18 origin.

19 3. Verification of a person's lawful presence in the United
20 States under the provisions of this section shall not be
21 required for the following:

22 a. For any purpose for which lawful presence in the United
23 States is not restricted by law.

24 b. For assistance for health care items and services
25 that are necessary for the treatment of an emergency medical
26 condition, as defined in 42 U.S.C. § 1396b(v)(3), of the
27 unauthorized alien involved and are not related to an organ
28 transplant procedure.

29 c. For short-term, noncash, in-kind emergency disaster
30 relief.

31 d. For public health assistance for immunizations with
32 respect to diseases and for testing and treatment of symptoms
33 of communicable diseases whether or not such symptoms are
34 caused by a communicable disease.

35 e. For programs, services, or assistance such as soup

1 kitchens, crisis counseling and intervention, and short-term
2 shelter specified by the United States attorney general, in the
3 sole and unreviewable discretion of the United States attorney
4 general after consultation with appropriate federal agencies
5 and departments, which meet all of the following criteria:

6 (1) Deliver in-kind services at the community level,
7 including through public or private nonprofit agencies.

8 (2) Do not condition the provision of assistance, the amount
9 of assistance provided, or the cost of assistance provided on
10 the income or resources of the individual recipient.

11 (3) Are necessary for the protection of life or safety.

12 *f.* For prenatal care.

13 4. To verify a natural person's lawful presence in the
14 United States in order to receive benefits, the state agency or
15 political subdivision required to make such verification shall
16 require the applicant to execute an affidavit under penalty of
17 perjury that makes one of the following assertions:

18 *a.* The applicant is a United States citizen.

19 *b.* The applicant is a qualified alien under the federal
20 Immigration and Nationality Act, as codified in Tit. 8, United
21 States Code, and is lawfully present in the United States.

22 5. For any applicant who has executed the affidavit
23 described in subsection 4, paragraph "b", eligibility for
24 benefits shall be verified through the federal systematic
25 alien verification for entitlement program operated by the
26 United States department of homeland security or a successor
27 program designated by the United States department of homeland
28 security. Until such eligibility verification is made, the
29 affidavit may be presumed to be proof of lawful presence for
30 the purposes of this section.

31 6. *a.* A person who knowingly and willfully makes a false,
32 fictitious, or fraudulent statement of representation in an
33 affidavit executed pursuant to subsection 4, shall be guilty of
34 a fraudulent practice pursuant to section 714.8, subsection 3.

35 *b.* If the affidavit constitutes a false claim of United

1 States citizenship under 18 U.S.C. § 911, a complaint shall
2 be filed by the state agency requiring the affidavit with the
3 United States attorney's office in the appropriate district in
4 this state.

5 7. A state agency or political subdivision of this state
6 may adopt variations to the requirements of this section which
7 demonstrably improve the efficiency or reduce delay in the
8 verification process, or to provide for adjudication of unique
9 individual circumstances where the verification procedures in
10 this section would impose unusual hardship on a legal resident
11 of this state.

12 8. A state agency or political subdivision of this state
13 shall not provide any state, local, or federal benefit, as
14 defined in 8 U.S.C. § 1621 or 8 U.S.C. § 1611, in violation of
15 the provisions of this section.

16 9. Each state agency that administers any program of state
17 or local public benefits shall provide an annual report to
18 the secretary of state with respect to its compliance with
19 the provisions of this section. Any and all errors shall
20 be reported to the United States department of homeland
21 security by the secretary of state. The secretary of state
22 shall monitor the federal systematic alien verification for
23 entitlement program and its verification application errors
24 and significant delays and shall provide an annual report
25 to the governor and the general assembly on such errors
26 and significant delays, and recommendations to ensure that
27 the application of the systematic alien verification for
28 entitlement program is not erroneously denying benefits to
29 legal residents of this state.

30 **Sec. 6. NEW SECTION. 710B.1 Unlawful assistance —**
31 **unauthorized aliens — penalty.**

32 1. For purposes of this section, "*unauthorized alien*" means
33 a person who is not lawfully present in the United States.

34 2. A person shall not transport, move, or attempt to
35 transport within this state any unauthorized alien, knowing

1 or in reckless disregard of the fact that the unauthorized
2 alien has come to, entered, or remained in the United States in
3 violation of law, in furtherance of the illegal presence of the
4 unauthorized alien in the United States.

5 3. A person shall not conceal, harbor, or shelter from
6 detection any unauthorized alien in any place, including any
7 building or means of transportation, knowing or in reckless
8 disregard of the fact that the unauthorized alien has come to,
9 entered, or remained in the United States in violation of law.

10 4. A person who violates this section is guilty of a serious
11 misdemeanor.

12 Sec. 7. NEW SECTION. 710B.2 Unauthorized aliens — official
13 documents.

14 1. Notwithstanding any other provision of law, the
15 following identification documents shall be issued only to
16 United States citizens, legal permanent resident aliens, or
17 holders of valid unexpired nonimmigrant visas.

18 a. Any driver's licenses or nonoperator's identification
19 cards pursuant to chapter 321, birth certificates pursuant to
20 chapter 144, or other identification documents required by
21 law or any legitimate purpose consistent with the duties of a
22 federal, state, or local governmental entity.

23 b. Identification designed to identify the bearer as a
24 student, faculty member, administrator, or employee of any
25 public or nonpublic school or state or private educational
26 institution.

27 2. a. The provisions of subsection 1 shall not apply
28 when an applicant presents, in person, proof of United States
29 citizenship including but not limited to one of the following:

30 (1) A federal passport.

31 (2) A state driver's license or state nonoperator's
32 identification card.

33 (3) A certified birth certificate.

34 b. The provisions of subsection 1 shall not apply when an
35 applicant presents, in person, valid documentary evidence of

1 any of the following:

2 (1) A valid unexpired immigrant or nonimmigrant visa status
3 for admission to the United States.

4 (2) A pending or approved application for asylum in the
5 United States.

6 (3) Admission into the United States in refugee status.

7 (4) A pending or approved application for temporary
8 protected status in the United States.

9 (5) Approved deferred action status.

10 (6) A pending application for adjustment of status to legal
11 permanent residence status or conditional residence status.

12 3. *a.* Upon presentation of valid documentary evidence in
13 subsection 2, paragraph "b", the applicant may be issued an
14 identification document as provided in subsection 1, unless
15 otherwise prohibited by law. Such identification document
16 shall be valid only during the time of the authorized stay of
17 the applicant in the United States, or if there is no definite
18 end to the period of authorized stay, a period of one year.

19 *b.* An identification document issued pursuant to this
20 subsection shall clearly indicate that it is temporary
21 and shall state the date that the identification document
22 expires. Such identification document may be renewed only
23 upon presentation of valid documentary evidence that the
24 status by which the applicant qualified for the identification
25 document has been extended by the United States citizenship
26 and immigration services or United States immigration and
27 customs enforcement of the United States department of homeland
28 security.

29 4. Any driver's license or nonoperator's identification
30 card issued pursuant to chapter 321 for which an application
31 has been made for renewal, duplication, or reissuance shall be
32 presumed to have been issued in accordance with the provisions
33 of subsection 1, provided that, at the time the application
34 is made, the driver's license or nonoperator's identification
35 card has not expired, or been canceled, suspended, or

1 revoked. The requirements of subsection 1 shall apply to
2 a renewal, duplication, or reissuance if the department of
3 transportation receives information or is notified by a local,
4 state, or federal agency that the person seeking such renewal,
5 duplication, or reissuance is neither a citizen of the United
6 States nor lawfully present in the United States.

7 Sec. 8. NEW SECTION. 710B.3 Criminal conduct — immigration
8 status verification.

9 1. A reasonable effort shall be made to determine the
10 citizenship of a person charged with a serious misdemeanor
11 or a more serious offense, or who is charged with operating
12 while intoxicated pursuant to section 321J.2, if the person is
13 confined for any period in a county jail or city jail.

14 2. If the person is not a United States citizen, the keeper
15 of the jail or other officer shall make a reasonable effort
16 to verify that the prisoner has been lawfully admitted into
17 the United States, and if lawfully admitted, that such lawful
18 status has not expired. If verification of the prisoner's
19 lawful status cannot be made from documents in the possession
20 of the prisoner, verification shall be made within forty-eight
21 hours through a query to United States immigration and customs
22 enforcement in the United States department of homeland
23 security or other office or agency designated for that purpose.
24 If the prisoner is determined not to be lawfully admitted to
25 the United States, the keeper of the jail or other officer
26 shall notify the United States department of homeland security.

27 3. For the purpose of determining the grant of or issuance
28 of bond, a prisoner whose citizenship status has been verified
29 pursuant to subsection 2 to be an unauthorized alien, shall be
30 deemed a flight risk.

31 4. The department of public safety shall by rule adopt
32 guidelines and procedures to be used to comply with the
33 provisions of this section.

34 Sec. 9. EFFECTIVE DATE. This Act takes effect January 1,
35 2012.

EXPLANATION

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This bill relates to illegal immigration in Iowa.

The bill directs the attorney general pursuant to new Code section 13.11 to negotiate a memorandum of understanding (MOU) regarding immigration issues between the state and the United States department of justice or the United States department of homeland security in order to increase joint enforcement of federal immigration law with the United States department of homeland security.

In new Code section 91A.15, the bill requires an employer to withhold state income tax from the compensation of an independent contractor who fails to provide a valid social security number. An employer who fails to withhold such required income taxes shall be liable for that amount.

The bill creates new Code chapter 91F, which requires that each public employer use the federal electronic work authorization program, known as e-verify, to verify the lawful presence of newly hired employees. Public employers are prohibited from entering into contracts unless the contractors register and participate in the e-verify program. The discharge of a United States citizen or a permanent resident alien employee of an employer, who, on the date of the discharge employed an unauthorized alien, shall constitute an unfair trade practice and the discharged employee shall have a private right of action.

Under Code section 234.15, the bill requires each state agency or political subdivision to verify the lawful presence of each natural person age 14 years or older who applies for state or local benefits, or federal benefits that are administered by the state agency or political subdivision using the systematic alien verification for entitlement program (SAVE). The Code section includes medical and disaster exceptions for the verification requirement. The state agencies and political subdivisions are required to follow a detailed process for verifying a person's lawful presence,

1 including completion of an affidavit by the applicant asserting
2 the applicant's lawful presence in the United States. A
3 person who knowingly and willfully makes a false, fictitious,
4 or fraudulent statement in an affidavit commits a fraudulent
5 practice, and may be subject to a class "C" felony through
6 a simple misdemeanor depending on the value of the services
7 and property fraudulently received. A class "C" felony is
8 punishable by confinement for no more than 10 years and a
9 fine of at least \$1,000 but not more than \$10,000. A class
10 "D" felony is punishable by confinement for no more than five
11 years and a fine of at least \$750 but not more than \$7,500. An
12 aggravated misdemeanor is punishable by confinement for no more
13 than two years and a fine of at least \$625 but not more than
14 \$6,250. A serious misdemeanor is punishable by confinement for
15 no more than one year and a fine of at least \$315 but not more
16 than \$1,875. A simple misdemeanor is punishable by confinement
17 for no more than 30 days or a fine of at least \$65 but not more
18 than \$625 or by both.

19 An annual report shall be compiled by the secretary of
20 state about the use of the SAVE program by the state agencies
21 and political subdivisions and the number of errors and any
22 significant delays. The report shall be provided to the
23 governor and general assembly.

24 The bill creates new Code chapter 710B. Under Code section
25 710B.1, a person shall not transport, harbor, or shelter
26 an alien in reckless disregard for the person's illegal
27 immigration status. Such a violation is a serious misdemeanor,
28 which is punishable by confinement for no more than one year
29 and a fine of at least \$315 but not more than \$1,875.

30 New Code section 710B.2 restricts the issuance of most
31 official identification documents only to United States
32 citizens, legal permanent residents, and holders of valid
33 unexpired visas.

34 The bill provides that a reasonable effort shall be made to
35 determine the citizenship of a person charged with a serious

1 misdemeanor or a more serious offense, or who is charged with
2 operating while intoxicated pursuant to Code section 321J.2,
3 if the person is confined for any period in a county jail or
4 city jail. Specific procedures are required to be followed by
5 law enforcement to verify the immigration status of a person in
6 custody. If the person is an unauthorized alien, the person
7 shall be reported to the United States department of homeland
8 security. The department of public safety is charged with
9 adopting guidelines and procedures for complying with this
10 provision.

11 The bill takes effect January 1, 2012.